

BEFORE THE FEDERAL ELECTION COMMISSION

2003 DEC -1 A II: 28

In the Matter of)
Santorum 2000, and Judith M. McVerry,) MUR 5344
as Treasurer)
Brabender Cox Mihalke Political, Inc.)

SENSITIVE

GENERAL COUNSEL'S REPORT # 3

I. ACTION RECOMMENDED: Accept the attached proposed conciliation agreement with Brabender Cox Mihalke Political, Inc. ("Brabender"), take no further action as to Santorum 2000 and Judith M. McVerry, as treasurer ("the Committee"), and close the file.

II. BACKGROUND

On January 7, 2003, the Commission found reason to believe that Brabender, a political consulting firm incorporated in Pennsylvania, and the Committee, the principal campaign committee supporting the re-election of Richard J. Santorum to the U.S. Senate in 2002, violated 2 U.S.C. § 441b(a) of the Federal Election Campaign Act of 1971, as amended ("the Act").¹ The basis for these findings was an unreimbursed expenditure of \$197,000 for media airtime made by Brabender on behalf of the Committee, which the Committee initially reported as a debt but later settled without payment. See First General Counsel's Report dated December 3, 2002. The Commission also found reason to believe that the Committee violated 2 U.S.C. § 434(b)(8) and

¹ The facts relevant to this matter occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Unless specifically stated to the contrary, all citations to FECA, codified at 2 U.S.C. §§ 431 *et seq.*, the Commission's regulations and all statements of applicable law herein, refer to FECA and its implementing regulations as they existed prior to the effective date of BCRA.

11 C.F.R. §§ 104.11(a) and 116.10(a) by failing to accurately report the \$197,000 as a disputed debt, including an adequate explanation of the circumstances surrounding its settlement.

III. CONCILIATION AGREEMENT

IV. NO FURTHER ACTION AS TO THE COMMITTEE

In General Counsel's Report #2, this Office stated that it anticipated recommending that the Commission take no further action as to the Committee

Since that time, this Office has obtained

1 no additional information relevant to the Committee. Consequently, for the reasons discussed
2 below, this Office recommends that the Commission take no further action as to the Committee
3 and close the file.

4 **A. Prohibited Corporate Contribution**

5 The Act prohibits any candidate or political committee from knowingly accepting or
6 receiving any contribution or expenditure from a corporation. *See id.* "Knowingly" does not
7 require a showing that the candidate or committee accepted the contribution with knowledge of a
8 violation of law; instead, it merely requires a party's knowledge of the facts rendering its conduct
9 unlawful. *See FEC v. Dramesi*, 640 F. Supp. 985, 987 (D.N.J. 1986); *accord FEC v. Friends of*
10 *Jane Harman*, 59 F. Supp.2d 1046, 1056 n.11 (C.D.Cal. 1999).

11 Based upon the information submitted by the respondents, it does not appear that the
12 Committee "knowingly" received the \$197,000 in-kind contribution. While it is true that the
13 television ads were created in coordination with the Committee and while the Committee initially
14 agreed to a budget and plan for the broadcasting of these ads, it would appear that the
15 instructions to cancel the \$197,000 media purchase near the end of the campaign negated the
16 Committee's "knowledge" and prior coordination of the media purchase.

17 **B. Reporting Violations**

18 A political committee is required to continuously report all debts and obligations owed
19 until extinguished. *See* 2 U.S.C. § 434(b)(8); 11 C.F.R. §§ 104.3(d), 104.11(a). Where such
20 debts and obligations are settled for less than their reported amount or value, each report must
21 contain a statement as to the circumstances and conditions under which the debt was incurred or
22 extinguished and the amount paid. *See id.*

1 In its 2000 Year-End Report, the Committee disclosed the \$197,000 as a debt owed to
2 Brabender for "media buy." The Committee explained in its response to the Commission's
3 reason to believe findings that its treasurer, Judith McVerry, was not aware that the \$197,000
4 represented unauthorized media buys at the time she submitted the Report. See Attachment 10,
5 at 2. According to the Committee, it was not until February 2001 when the Committee had an
6 opportunity to review the details of its overall campaign spending and debt retirement plan that it
7 realized that Brabender invoiced the Committee for unauthorized media buys. See *id.* Thus, it
8 does not appear that the Committee misrepresented the nature of the \$197,000 invoice in its 2000
9 Year-End Report.

10 Once it discovered the unauthorized expenditure, the Committee should have amended its
11 2000 Year-End Report and removed the \$197,000 "debt" from Schedule D with a letter of
12 explanation. Instead, the Committee reported in its 2001 Mid-Year Report that the "debt" had
13 been paid with a cover letter indicating that the \$197,000 was an unauthorized expenditure that
14 the vendor agreed the Committee was not responsible for. This error reportedly occurred on the
15 advice of the Commission's Reports Analysis Division ("RAD").²

16 Given that the reporting error was relatively minor, the fact that the Committee provided
17 a letter of explanation with its 2001 Mid-Year Report, and the entire context of this matter, this
18 Office believes that the Commission should take no further action as to this violation.

² According to the Committee, the Committee reported that the debt had been paid on the advice of its RAD Analyst. See Attachment 9, at 2. Records maintained by RAD indicate that a RAD Analyst had a telephone conversation with counsel for the Committee on June 28, 2001 and that during this conversation counsel advised that it had a debt owed to a consultant that had been disputed, that the amount in dispute had been reduced and that counsel would provide a letter of explanation. These records provide no indication that the Analyst, who is no longer employed with the FEC, offered advice to the Committee regarding the reporting of the debt or its settlement.

V. RECOMMENDATIONS

1. Approve the attached proposed conciliation agreement for Brabender Cox Mihalke Political, Inc.
2. Take no further action as to Santorum 2000 and Judith M. McVerry, as treasurer.
3. Approve the appropriate letters.
4. Close the file.

Lawrence H. Norton
General Counsel

11/26/03
Date

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